IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 173 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
SANJAY@ SANDEEP SOMABHAI VANVI & ORS

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Appearance :
MR IM PANDYA APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/04/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge and Fast Track Judge, Junagadh, on 7th of October, 2004, in Sessions Case No. 70 of 2003, whereby all the three respondents being accused of the said Sessions Case came to be acquitted for the offences punishable under Sections 302, 364, 392, 457, 201 to read with Section Section 34 of the Indian Penal Code as well as for the offence punishable under Section 135 of the Bombay Police Act.

2 As per the prosecution case, the complaint of this case was given on 20.7.2003 before the City Police Station by Mr. B.B. Gohil, PSI, Junagadh City `A' Division Police Station. According to him, before two months of 05th of March, 2001, one complaint was made before the police about missing of one Maniben, widow of Shamji Naranbhai Parkara Barot, aged about 40 years, resident of Ambedkarnagar at Junagadh. This complaint was made before `A' Division Police Station by one Prakashbhai Rambhai Barot, nephew of missing lady Maniben. Prakashbhai Rambhai Barot was resident of village Medarada, Taluka – Junagadh. This declaration was recorded by PSO of Junagadh `A' Division Police Station in relevant register by Entry

No. 6 of 2001, and vide Station Diary Entry No.21/2001, on 5th of March, 2001, the inquiry of this missing person was entrusted to one PSI N.R. Vaghela of Pradip Chowki Police Station of Junagadh, but nothing was found fruitful from the inquiry. In the meantime, P.I. Mr. B.G. Limbasiya of Junagadh `A' Division Police Station was investigating in other Crime Register No. I-171 of 2003 for the offence punishable under Section 395, etc and also Crime Register No. I-172 of 2003 for the offence punishable under Section 302 etc. Mr. Limbasiya in the said crimes arrested present accused No.2 Valimahammad Osman Nareja and accused No.3 Ajay @ Vijay Bhagvanji Bariya, residents of Jungadh, and according to prosecution case, both these persons were involved in so many crimes earlier. Therefore, investigation was made from these two accused by Shri Limbasiya as to whether they were involved in the crime of said inquiry of missing of Maniben. During investigation of Crime Register Nos. 172 of 2003 and 171 of 2003, before PI Limbasiya, accused No. 2 and 3 - Valimahammad Osman Nareja and Ajay @ Vijay Bhagvanji Bariya, confessed the offence that before one to two and half years, along with accused No.1, Sanjay Soma Vanvi, resident of Ambedkarnagar, Junagadh, had committed murder of missing lady Maniben. It was confessed by above two accused before PI Limbasiya that in one rickshaw, missing lady Maniben was kidnapped through keeping her in danger by a knife

and was taken to PTS and near “kabutar khana”. There was an abandoned well near this place known as “kabutar khana”, accused No.2 Valimahammad Osman Nareja caught Maniben by hands and accused No.3 Ajay @ Vijay Bhagvanji Bariya caught Maniben by her legs. Thereafter, Maniben was strangulated by her sari and she was done to death. Thereafter, all the three accused poured kerosene upon her and set her ablaze and pushed her in the said abandoned well. Thereafter all the three accused came to the house of deceased Maniben, broke open the lock, and from the cupboard, robbed cash amount of Rs. 1,25,000/- one ornament, named as `Bajubandh' , one necklace, one pair of ear rings, etc and each of these persons obtained Rs. 35,000/- from this loot. They also distributed ornaments robbed from the house of deceased Maniben. Therefore, two panchas were called and the Executive Magistrate Mr. P.J. Savalia and one Officer from Forensic Science Laboratory Mr. S.T. Bapodara and along with staff of Fire Brigade, staff of Police and with these two accused Nos. 2 and 3, police party reached to the said abandoned well, which was shown by these two accused. On digging well, bones were found, which appeared to be bones of human being. One-half burnt sari, a hair pin and two pieces of quilt were also found. Rickshaw driver Dharmendrabhai Jadav, who had taken the accused and Maniben upto certain juncture, supported in the investigation

and, therefore, this complaint was given by complainant PSI B.B. Gohil, and the above said crime being Crime Register No. I-190/2003 was registered against all the three respondents before Junagadh City Police Station. The investigation was handed over to Mr. Limbasiya. He draw inquest panchnama and seized muddamal bones in the presence of panchas, which were dug out from the abandoned well. Those bones were sent to the Medical Officer for postmortem. The accused had shown the place of offence and, therefore, a panchnama in this respect was drawn and the statements of some witnesses were recorded. Discovery panchnama in respect of four ear rings was also drawn as the accused made disclosure statement in this regard. Muddamal was sent thereafter to Forensic Science Laboratory and a charge sheet was filed for the above said offence against all the three accused in the Court of learned Chief Judicial Magistrate, Junagadh. Thereafter, the case was committed to the Court of Sessions, and charge was framed against all the three accused, vide Exhibit-9 on 26.3.2004 by learned Additional Sessions Judge. All the three accused pleaded not guilty and, therefore, prosecution examined following 15 witnesses :

1. PW-1 Rameshkumar Arjanbhai Musadiya Exh. 19
2. PW-2 Merubhai Lilabhai, Panch witness Exh. 26

3. PW-3 Ranajitbhai Bachubhai, panch witness Exh. 27

4. PW-4 Rakhalchand Gopeshchand, Medical Officer, Exh.60

5. PW-5 Ashokbhai Naginbhai Jagda, panch witness, Exh. 65

6. PW-6 Paresh Vasarambhai Vaja, panch witness Exh.68

7. PW-7 Maheshbhai Rameshbhai, Exh. 76

8. PW-8 Dharmendrabhai Jadavbhai, Exh. 77

9. PW-9 Madhavdas Lingomal Mulchandani, Exh. 78

10. PW-10 Jitubhai Manibhai, Exh. 79

11. PW-11 Virendrabhai Rameshchandra, Exh.80

12. PW-12 Khodabhai Dhayabhai, Exh. 81

13. PW-13 Vallabhbhai Dhayabhai, Exh. 82

14. PW-14 Bharatsinh Balvantsinh Gohil, PSI,Exh. 85

15. PW-15 Bhimjibhai Govindbhai Limbasiya, PSI, Exh.91

3 The prosecution also produced on record inquest panchnama vide Exh. 21; a form in respect of postmortem at Exhibit-22, Postmortem Note of Junagadh Hospital at Exhibit-23; a Yadi addressed by Medical Officer; Junagadh to Forensic Science Laboratory is produced at Exhibit-24; panchnama of the abandoned well i.e. scene of offence at Exhibit-28; panchnama of muddamal seized by FSL from the scene of offence is produced at Exhibit-29; arrest panchnama of accused No.1 Sanjay @ Sandeep Somabhai Vanvi is produced at

Exhibit-30; panchnama of arrest of remaining two accused is produced at Exhibit-31, the letter addressed to FSL for analysis is produced at Exhibit-37; Receipt of Forensic Science Laboratory is produced vide Exhibits 38 and 39; Serological Analysis of the FSL is produced vide Exhibits – 40, 41, 42 and 43; a Yadi of muddal and viscera forwarded for analysis is produced at Exhibits 44 and 45; reports of the FSL are produced at Exhibits 49 to 54; an notification under the Bombay Police Act is produced at Exhibit-55; PM Note of the deceased as performed by Hospital at Jamnagar is produced at Exhibit-62; discovery panchnama in respect of four ear rings at the instance of accused No.1 Sanjay is produced at Exhibit-66; an entry made about missing of Maniben in the police register is produced at Exhibit-70; a Will executed by husband of Maniben is produced at Exhibit–72; Complaint is produced at Exhibit-89; a panchnama of scene of offence as shown by accused No.1 is produced at Exhibit-96 and copy of Station Diary Entry is produced at Exhibit – 101.

4 After the evidence was over, the statements of all the three accused were recorded by the Trial Court under Section 313 of the Code of Criminal Procedure, in which after denying the evidence of the prosecution in toto, each accused stated that a false case was framed against them by police.

5 The learned APP Mr. I.M. Pandya on behalf of the State vehemently urged that, no doubt, the case rests upon the circumstantial evidence and the dead body was discovered after lapse of time in mere bones. It is submitted that it is proved that those bones found from the well belonged to a female of aged about 40 years, and that this being a very serious heinous crime committed by the accused, the evidence recorded is required to be scrutinized carefully. It is submitted that the Trial Court erred in appreciating the evidence and there is no reason to disbelieve at least the evidence of police officer in respect of discovery of scene of offence and discovery of the ear rings at the instance of accused No.1 though the panchas of the said panchnama have turned hostile. It is submitted that therefore it is necessary that the method of appreciation of evidence by Trial Judge be scrutinized by this Court and, hence, this Appeal requires consideration.

6 Needless it is to observe that, in acquittal Appeals, the High Court has the same powers to independently ascertain the evidence and appreciate the same independently, as has been done in the Appeals against the orders of conviction. It is also established law that if the High Court comes to the different conclusion than arrived at by the Trial Court, the reasons assigned by the Trial Court for the

acquittal must first be dislodged for reasons in appeal against acquittal. Even if, when there are two views possible from the same evidence, the view favourable to the accused must be adopted.

7 At this stage, we have called for the Record and Proceedings from the Trial Court and we have gone through carefully and have scanned the evidence recorded during the trial as well as we have considered each of the documents produced on record by the prosecution. With reference to the contentions raised by the State we have taken into consideration at this stage vital circumstances of the case and have evaluated broad and reasonable probabilities and all the circumstances arising out of the evidence recorded. The Record and Proceedings of the Trial Court is available with us and we are supplied with the extra copies of the evidence and documents by learned APP and, therefore, we have heard and considered this Appeal thoroughly at this stage.

8 Before coming to the conclusion, therefore it is necessary to go through the evidence carefully.

9 PW- 1 Rameshkumar Arjanbhai Musadiya is examined at Exhibit – 19 and he was serving as Medical Officer, Government

Hospital at Junagadh. On 21st of July, 2003, at 10.45 a.m. Police forwarded bones recovered from the well for the postmortem to the hospital and this witness attempted to perform the postmortem. According to him, there were 10 big size bones, 14 long small size bones and other small pieces of bones. According to this witness, he was not in a position to give opinion as to the cause of death and, therefore, it was necessary to forward these bones to Forensic Science Laboratory to ascertain the cause of death. He, therefore, vide Exhibit 23 forwarded bones to the Medical College, Jamnagar, along with PM report. PM Note is produced at Exhibit – 24.

This witness is not useful to implicate the accused in the said crime.

10 PW-2 Merubhai Lilabhai, Exhibit-26 and PW-3 Ranajitbhai Bachubhai, Exhibit-27 are panchas of panchnama at Exhibit-28. It is the prosecution case that both these panchas were informed about missing of Maniben and in their presence accused Nos. 2 and 3 disclosed to show the scene of offene and, therefore, a preliminary panchnama was prepared and, therefore with the help of Fire Brigade, the accused led the Executive Magistrate, Police Party and panchas to the abandoned well and from abandoned well, the

above said bones etc were found. However, none of these two witnesses supported the prosecution case or panchnama Exhibit – 28. They were declared hostile and in hostile cross-examination by the prosecution they denied the contents of the said panchnama.

Thus, these two witnesses are not supporting the prosecution case and not involved in any of the accused in the said crime.

11 Exhibit – 43 is opinion of FSL on receipt of sari, pieces of quilt and earth recovered from the place of offence, and according to the opinion from all these four samples, the blood was found of `A' Group.

12 Exhibit – 52 is also opinion of Chemical Analyzer of Forensic Science Laboratory, Ahmedabad, regarding the pieces of bones sent for the chemical analysis, and according to the opinion, though some blood was found but the group could not be decided.

13 Map of scene of offence is produced at Exhibit 59.

14 PW-4 Rakhalchand Gopeschand Dutta is examined at Exhibit – 60, and according to him, he was working as Medical

Officer, M.P. Shah Medical Division in Forensic Science Medicine Department around 22nd of July, 2003. This Doctor is from Jamnagar. The Medical Officer at Junagadh had forwarded bones, etc. for ascertaining the cause of death to the Hospital at Jamnagar and therefore, this witness is examined. He opined that in the bones forwarded to him, there were bones of human being and there were bones of animals also. The bones of human being were separated, and it was found that those bones were of parietal region, frontal region, maxilla region, clevical, mandible, humorous, femur, tibia, patella bones of human being. It was his opinion that in the bones no antemortem injuries were found and it was not seen with blood. According to this witness, also from examination of these bones, he could not say exactly the cause of death. For that he produced on record a certificate at Exhibit-24. In his cross-examination, he stated that from these bones it could not be said that the death was natural or unnatural. He could say that the bones were of female human being by 99% , but it may be of male human being by one per cent.

Thus, this witness is also not useful to bring the guilt home of the accused, according to the prosecution case.

15 PW-5 Ashokbhai Naginbhai Jagda is examined at Exhibit – 65. He is panch of discovery panchnama of four golden rings recovered at the instance of accused No.1 Sanjay @ Sandeep Somabhai Vanvi. Preliminary panchnama and final panchnama in this regard is produced by the prosecution vide Exhibits 66 and 67. It is the prosecution case that accused No.1 Sanjay @ Sandeep Somabhai Vanvi made a disclosure statement before this panch and police that he had kept four golden rings, which he had stolen from the house of deceased Maniben, at the house of his mother-in-law Shantaben, and from there, from the north wall of toilet from the ground between two stones he discovered those four rings, but this witness did not support the prosecution case at all, and was confronted with the contents of the panchnama, but he denied all the contents of the panchnama.

16 PW-6 Paresh Vasarambhai Vaja is examined at Exhibit-68 and he is panch of panchnama at Exhibit 66, but he has also not supported the prosecution case and has denied the contents of the panchnama.

Thus, these two witnesses also have not supported the prosecution case in respect of discovery of four rings stated to have

stolen by the accused from the house of deceased Maniben and these two witnesses are not involving any of the accused in the said crime.

17 PW-7 Maheshbhai Rameshbhai is examined at Exhibit-76 by the prosecution. He is the grandson of deceased Maniben. According to him, his father was Rameshbhai and Chhaganbhai was his grandfather. Deceased Shamjibhai was brother of Chhaganbhai and deceased Maniben was wife of Shamjibhai. Maniben had one son named as Haribhai, but he had died. Shamjibhai and Maniben had no other issue and Shamjibhai was retired from Police Jamadar. The witness was staying with Shamjibhai and therefore Shamjibhai had executed a Will in his favour. Thereafter he shifted to Bilkha from Junagadh and Shamjibhai died on account of heart trouble. Thereafter deceased Maniben was staying alone, this witness was inquiring about Maniben and was visiting her in 8 to 10 days at Junagadh. He had received a phone call from one Prakashbhai, who was staying at Medarada and deceased Maniben happened to be “foi” of Prakashbhai. Prakashbhai had inquired from him whether Maniben had visited him, but he replied to Prakashbhai that Maniben had not visited him. The prosecution case is, in his police statement, he had stated that police had informed him that the accused had murdered

Maniben and had robbed ornament and cash from her house, but this witness did not support this part of the prosecution case and he was declared hostile. Thus, this witness is also not helpful to the prosecution to bring home the guilt of the accused.

18 PW - 8 Dharmendabhai Jadavbhai is examined at Exhibit 77. It is the prosecution case that before two and half years of July 2003, at about 7.30 p.m., while this witness was in Kalva Chowk along with his rickshaw, he was visited by deceased Maniben residing at Ambedkarnagar. Maniben had inquired about going towards Dhararnagar from Datar road. According to the prosecution case, this witness had agreed to take deceased Maniben to Dhararnagar in his rickshaw and Rs. 12 fare was decided. Maniben had boarded in his rickshaw. At that very juncture, accused no.3 Ajay @ Vijay Bhagvanji Bariya as well as accused No.1 Sanjay @ Sandeep Somabhai Vanvi also boarded the rickshaw along with Maniben saying that they had to go to Dhararnagar and sat beside Maniben in the rickshaw. When rickshaw reached near PTS, accused changed the side, and on one side accused No.1 sat and on the other side of deceased Maniben, accused No.3 sat and Maniben was taken in between them. When rickshaw reached near Ambedkarnagar, accused No.2 took out a knife from him and showed it to this witness rickshaw driver and threatened to take

rickshaw on Bilkha road. Therefore, this witness took the rickshaw on Bilkha road, where near Pachatiya, Sanjay stopped the rickshaw and both the accused threatened Maniben with knife to accompany them. Therefore Maniben and others got down from the rickshaw and these two accused threatened this witness rickshaw driver that if he had divulged this fact to anybody, he would be done to death. It was the prosecution case that thereafter while this rickshaw driver was returning, in the way accused No.2 met him and inquired as to where the accused No. 1 and 3 had gone. On replying by this witness, accused No.2 went towards Dungarpur. On account of threatening, this witness rickshaw driver did not divulge anything to anybody. After some days, Valimahammad Osman Nareja i.e. accused No.2 met this witness rickshaw driver in Kalva Chowk at Junagadh at about 10.00 a.m. and Valimahammad told to this Driver that on that day all the three accused had murdered Maniben and she was thrown in abandoned well. According to the prosecution case, this was the version given by this witness before the police. However, vide Exhibit – 77, this witness Dharmendrabhai Jadavbhai did not support the prosecution case at all and denied that in January 2001 though he was plying rickshaw, he had not taken any female passenger in the evening. He did not know any female named as Maniben residing at Dhararnagar. He denied that any

incident had taken place while he was plying rickshaw during that period. He denied that he was threatened by anybody. The witness was declared hostile and was confronted with his police statement, but he denied all the contents.

Thus, this witness has also not supported the prosecution case and is not helpful to link the accused with the crime.

19 PW-9 Madhavdas Lingomal Mulchandani, is examined at Exhibit – 78. According to the prosecution case, this witness is possessing licence under Money Lenders Act, and that accused No. 1 had pledged four rings with him and had taken money thereafter. He had paid those money and redeemed those rings, but this witness also not supported the prosecution case from the above said fact and has turned hostile . Thus, this witness is not helpful to the prosecution case.

20 PW-10 Jitubhai Manibhai is examined at Exhibit-79. According to the prosecution case, this witness was doing the business of jeweller and four rings of muddamal were weighed by this witness, but this witness also did not support the prosecution theory and denied to have weighed any ring at the instance of police.

21 PW-11 Virendrabhai Rameshchandra is examined at

Exhibit – 80 and is brother of Ramesbhai and father of PW-7 Maheshbhai Rameshbhai and relative of deceased Maniben. He stated that nephew of deceased Maniben had informed the police about missing of Maniben, but he did not know anything about the incident or about any ornaments possessed by deceased Maniben. When rings of muddamal Article No. 7 were shown to this witness, he stated that he could not identify these rings to be of deceased Maniben nor he identified any ornaments of deceased Maniben.

22 Witness No. 12 Khodabhai Dhayabhai is examined at Exhibit – 81; PW-13 Vallabhbhai Dhayabhai is examined at Exhibit-82. Both are the witnesses and according to them they were called by the police to kabaturi khana at abandoned well and they had excavated the well, from where bones were found. Thus, these two witnesses also are not useful to the prosecution case in proving the case against the accused.

23 PW – 14 Bharatsinh Balvantsinh Gohil, is examined by the prosecution being complainant of this case. He gave the complaint as afore stated. He further stated that he had accompanied PSI Limbasiya in the investigation at the instance of accused No.1 and 2 abandoned well was excavated and bones were found. He recorded the

panchnama of scene of offence at Exhibit - 28. He produced the complaint at Exhibit – 89.

24 PW-15 and last witness PSI Bhimjibhai Govindbhai Limbasiya is examined at Exhibit – 91. He has stated that he was investigating in Crime Register No. I-171 of 2003 and 172 of 2003. In each case, accused No.2 Valimahammad Osman Nareja and accused No.3 Ajay @ Vijay Bhagvanji Bariya were the accused. During that investigation, both the accused confessed before him that Maniben was done to death by them and, therefore, Gohil had filed a complaint. Thereafter he took the charge of investigation, arrested the accused, draw the panchnama and recorded the statements of the witnesses. He referred the panchnamas of scene of offence drawn at the instance of accused Nos.1 and 3 and discovery panchnama also. Except that, nothing is found incriminating so far as the accused is concerned from the deposition of the above witness.

25 Taking into consideration the above evidence which is recorded, it is clear that the prosecution has failed to prove the case against the accused of having murdered Maniben. Firstly, it is not proved that the bones which were recovered from the well belonged to Maniben. The discovery of scene of offence, at the instance of the

accused, is of no avail to the prosecution as it could not be established that the bones were of deceased Maniben and it could not be proved beyond doubt that the bones which were recovered from the abandoned well were of female as the expert witness stated that he could say that the bones 99% were of female. The discovery of the golden rings at the instance of accused No.1 is also of no avail to the prosecution as it could not be established by the prosecution that those rings belonged to deceased Maniben. None of the witnesses, amongst the witnesses examined, as a relative of deceased Maniben, stated that those rings belonged to the deceased Maniben. Not only that, but the discovery at the instance of accused No.1, also could not be established by the prosecution beyond doubt. Star circumstance in favour of the prosecution to bring home the guilt of the accused appears to be in respect of rickshaw, in which deceased Maniben travelled, but PW-8 Dharmendrabhai Jadavbhai, rickshaw driver, examined at Exhibit-77, did not support the prosecution case at all. Thus the circumstance that accused were last seen together with deceased Maniben could not be proved by the prosecution beyond doubt. The prosecution also could not prove the alleged extra judicial confession made before the said witness by accused No.2 in respect of crime. The law on the aspect of circumstantial evidence is very clear. Though the case against the accused can be proved through circumstantial

evidence as well, but in that case, each circumstance must be proved by the prosecution so as to form a chain of links, and each link of such chain must indicate that the crime must have been committed by the accused and the accused only. Not only that, but those circumstances must be so discarding of reasonable possibilities of innocence of the accused. From our independent assessment of the evidence as aforesaid, we undoubtedly and unhesitatingly come to the conclusion that the prosecution has not only failed to prove the case against the accused, but there is no iota of evidence against any of the accused, except alleged confession by accused Nos. 1 and 3 before PSI Limbasiya, who was investigating the offence in some other crimes registered. However, those confession, if at all made by the accused, could not be proved by the prosecution. Except that, thus, there is no other circumstance even indicating the guilt of the accused.

26 The learned Trial Judge also acquitted the accused for the above said reasons, we do not find that the reasons assigned by the Trial Court are perverse and against the weight of the evidence recorded during the trial. There are no grounds to dislodge the reasons reached at by the Trial Court for the acquittal. We, therefore, do not find the judgment and order impugned in this Appeal exceptionable even at this stage though we have examined the

merits of the Appeal thoroughly.

27 In this view of the matter, for the reasons recorded above, the following order is passed.

"Leave to Appeal is refused. Appeal stands dismissed."

(J. R. VORA, J.)

(BANKIM.N.MEHTA, J.)

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